

Introduced by Senator Wright

February 17, 2011

An act to add Part 14.5 (commencing with Section 33001) to Division 2 of the Revenue and Taxation Code, relating to taxation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 530, as introduced, Wright. Taxation: direct broadcast satellite television service: tax.

Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would impose, for the privilege of selling video service, a tax on a direct broadcast satellite television service provider at the rate of 6% of its gross revenues, as defined. The tax would be administered by the State Board of Equalization and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law, as specified. The revenues from this tax would be deposited in the Local Safety and Protection Account established in the Transportation Tax Fund, a continuously appropriated fund. By depositing revenues into a continuously appropriated fund, this bill would make an appropriation.

Because this bill would expand the application of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute, but its operative date would depend on its effective date.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Part 14.5 (commencing with Section 33001) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 14.5. SATELLITE VIDEO FUND FOR PUBLIC SAFETY
TAX

CHAPTER 1. GENERAL PROVISIONS AND FINDINGS

33001. This part is known and may be cited as the Satellite Video Fund for Public Safety Tax.

33002. The Legislature finds and declares all of the following:

(a) As a matter of statewide concern and for many reasons, including those articulated herein, the Legislature hereby enacts a new state tax on direct broadcast satellite (DBS) television service providers. The purpose of this new tax is to provide funding to support programs for local law enforcement and other public safety services so that those programs can be maintained while funding for similar programs has been reduced due to the combination of the economic recession and the state's budgetary problems.

(b) DBS services use satellite and terrestrial technologies to provide video programming to homes and businesses in California. Companies that provide DBS services benefit from both state and local infrastructure as well as state and local laws and policies that facilitate the receipt of the satellite programming in homes and businesses.

(c) DBS service providers maintain offices and other property within some cities and counties in California. DBS providers have employees and contractors throughout California which sell, install, and maintain DBS service. In this way, DBS service providers

1 operate in a manner similar to other businesses throughout cities
2 and counties in California.

3 (d) As competition in the market for video services has evolved,
4 the tax and fee structure has not protected the revenue base, and
5 that lack of protection now threatens to undermine financial support
6 for public safety programs.

7 (e) Although DBS providers benefit from both state and local
8 infrastructure as well as state and local laws and policies that
9 facilitate the receipt of the satellite programming in homes and
10 businesses, DBS does not contribute to city and county general
11 funds which support law enforcement and other public safety
12 services. Moreover, DBS providers do not provide emergency alert
13 services in California communities.

14 (f) Cities and counties throughout California have been forced
15 to reduce law enforcement and public safety budgets because of
16 the nationwide economic downturn and the cuts that have been
17 made to programs and services in California.

18 (g) Some video products, services, providers, subscribers, and
19 customers have taxes and fees that generate revenue to fund local
20 public safety programs such as: (1) purchasers and renters of DVDs
21 who pay sales taxes; (2) cable television, open-video system, and
22 video service providers who pay state or local franchise fees; and
23 (3) cable and other non-DBS video subscribers who pay local
24 utility user taxes, some of which must be spent on public safety
25 programs according to ordinances passed in local communities.

26 (h) However, DBS providers make little, if any, money available
27 to support local public safety programs.

28 (i) The Legislature finds that the disparity in the tax and fee
29 burdens on video products, services, and providers has a harmful
30 impact on public safety to the extent that, when customers migrate
31 to DBS service, various revenue bases diminish, and there are less
32 financial resources available for state and local public safety
33 programs.

34 (j) Congress anticipated that the Legislature would enact a state
35 DBS tax framework consistent with California's particular
36 circumstances when it passed Section 602 of the
37 Telecommunications Act of 1996, which authorized states to tax
38 direct-to-home satellite service. Although Section 602 preempts
39 locally imposed and administered taxes and fees on direct-to-home

1 satellite services, it permits states to allocate revenue from state
2 taxes to local governments.

3 (k) To preserve the tax base for local public safety programs
4 and comply with the provisions of Section 602 of the
5 Telecommunication Act of 1996, the Legislature creates this part
6 to be administered by the State Board of Equalization, with
7 revenues to be transferred to the Local Safety and Protection
8 Account for continuous allocation to the programs designated in
9 subdivision (b) of Section 10752.2.

10
11 CHAPTER 2. DEFINITIONS
12

13 33003. For purposes of this part:

14 (a) “Cable service” means cable service as defined in subdivision
15 (c) of Section 5830 of the Public Utilities Code.

16 (b) “Direct broadcast satellite television service” and “DBS
17 service” means television programming transmitted or broadcasted
18 by satellite directly to the subscriber’s premises.

19 (c) “DBS service provider” or “DBS provider” means any person
20 that sells DBS service.

21 (d) (1) “Gross revenues” means all revenue of the DBS service
22 provider, as determined in accordance with generally accepted
23 accounting principles, that is derived from the DBS service
24 provider’s provision of video service in this state, including all of
25 the following:

26 (A) All charges billed to subscribers for any and all video service
27 provided by the DBS service provider, including all revenue related
28 to programming provided to the subscriber, equipment rentals, late
29 fees, and insufficient fund fees.

30 (B) Compensation received by the DBS service provider that
31 is derived from the DBS service provider’s operation with respect
32 to commissions that are paid to the DBS service provider as
33 compensation for promotion or exhibition of any products or
34 services on the provider’s network, such as a “home shopping” or
35 similar channel, subject to subparagraph (D) of paragraph (2).

36 (C) A pro rata portion of all revenue derived by the DBS service
37 provider or its affiliates pursuant to compensation arrangements
38 for advertising derived from the operation of the provider’s video
39 service within the state, subject to subparagraph (A) of paragraph
40 (2). The allocation shall be based on the number of subscribers in

1 this state divided by the total number of subscribers in relation to
2 the relevant regional or national compensation arrangement.

3 (2) “Gross revenue” does not include any of the following:

4 (A) Amounts not actually received, even if billed, such as bad
5 debt; refunds, rebates, or discounts to subscribers or other third
6 parties; or revenue imputed from the provision of DBS services
7 for free or at reduced rates to any person as required or allowed
8 by law, including, but not limited to, the provision of these services
9 to public institutions, public schools, governmental agencies, or
10 employees except that foregone revenue chosen not to be received
11 in exchange for trades, barter, services, or other items of value
12 shall be included in gross revenue.

13 (B) Revenues received by any affiliate or any other person in
14 exchange for supplying goods or services used by the DBS service
15 provider to provide video services. However, revenue received by
16 an affiliate of the DBS service provider from the affiliate’s
17 provision of video service shall be included in gross revenue as
18 follows:

19 (i) To the extent that treating the revenue as revenue of the
20 affiliate, instead of revenue of the video provider, would have the
21 effect of evading the payment of taxes that would otherwise be
22 paid to the state under this part.

23 (ii) The revenue is not otherwise subject to the tax to be paid to
24 the state under this part.

25 (C) Revenue derived from services classified as nonvideo
26 services under federal law, including, but not limited to, revenue
27 derived from telecommunications services and information
28 services, other than video services, and any other revenues
29 attributed by the DBS service provider to nonvideo services in
30 accordance with Federal Communications Commission rules,
31 regulations, standards, or orders.

32 (D) Revenue paid by subscribers to “home shopping” or similar
33 networks directly from the sale of merchandise through any home
34 shopping channel offered as part of the video services. However,
35 commissions or other compensation paid to the DBS service
36 provider by “home shopping” or similar networks for the promotion
37 or exhibition of products or services shall be included in gross
38 revenue.

1 (E) Revenue from the sale of video services for resale in which
2 the reseller is required to collect the tax under this part from the
3 reseller's subscribers.

4 (F) Amounts billed to, and collected from, subscribers to recover
5 any tax, fee, or surcharge imposed by any governmental entity on
6 the video service provider, including, but not limited to, sales and
7 use taxes, gross receipts taxes, excise taxes, utility users taxes,
8 public service taxes, communication taxes, and any other fee not
9 imposed by this section.

10 (G) Revenue from the sale of capital assets or surplus equipment
11 not used by the purchaser to receive DBS services from the seller
12 of those assets or surplus equipment.

13 (H) Revenue from directory or Internet advertising revenue,
14 including, but not limited to, yellow pages, white pages, banner
15 advertisement, and electronic publishing.

16 (I) Revenue received as reimbursement by programmers of
17 specific, identifiable marketing costs incurred by the DBS service
18 provider for the introduction of new programming.

19 (J) Security deposits received from subscribers of a DBS service
20 provider, excluding security deposits applied to the outstanding
21 balance of a subscriber's account and thereby taken into revenue.

22 (3) For purposes of determining gross revenue under this part,
23 the DBS service provider shall use the same method of determining
24 revenues under generally accepted accounting principles as that
25 which the DBS service provider uses in determining revenues for
26 the purpose of reporting to national and state regulatory agencies.

27 (e) "Local franchise" means a franchise that is issued pursuant
28 to Section 53066 of the Government Code including an initial
29 authorization, or renewal thereof, including a renewal of an
30 authorization, issued by a city or county, whether such
31 authorization is designated as a franchise, permit, license,
32 resolution, contract, certificate, agreement, ordinance, or otherwise,
33 which authorizes the construction or operation of a cable system.

34 (f) "Open-video system" (OVS) means open-video system as
35 defined in subdivision (m) of Section 5830 of the Public Utilities
36 Code.

37 (g) "State franchise" means state franchise as defined in
38 subdivision (p) of Section 5830 of the Public Utilities Code.

1 (h) “Subscriber” means any person, firm, partnership,
2 corporation, limited liability company, or other entity paying to
3 receive video service in this state.

4 (i) “Video service” means video service offered by any
5 direct-to-home satellite service provider.

6 (j) “Video service provider” means an entity providing video
7 service including a provider of cable service subject to a local
8 franchise, a provider of video service subject to a local franchise,
9 a provider of video service subject to a state franchise, or a provider
10 of direct broadcast satellite television service and OVS operator
11 providing video service.

12
13 CHAPTER 3. IMPOSITION OF TAX
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15 33004. (a) For the privilege of selling video service in this
16 state, a tax is hereby imposed on DBS service providers at the rate
17 of 6 percent of its gross revenues.

18 (b) For purposes of this part, in the case of a video service that
19 may be bundled or integrated functionally with other services,
20 capabilities, or applications, the tax herein shall be applied to the
21 gross revenue received by the DBS provider. Where the DBS
22 service provider or any affiliate bundles, integrates, ties, or
23 combines video services with nonvideo services creating a bundled
24 package, so that subscribers pay a single fee for more than one
25 class of service or receive a discount on video services, gross
26 revenues shall be determined based on an equal allocation of the
27 package discount, that is, the total price of the individual classes
28 of service at advertised rates compared to the package price, among
29 all classes of service comprising the package. The DBS service
30 provider’s offering of a bundled package shall not be deemed a
31 promotional activity. If the DBS service provider does not offer
32 any component of the bundled package separately, the DBS service
33 provider shall declare a stated retail value for each component
34 based on reasonable comparable prices for the product or service
35 for the purpose of determining the tax based on the package
36 discount.

CHAPTER 4. COLLECTION AND ADMINISTRATION

33006. The taxes imposed by this part are due and payable to the state quarterly on or before the last day of the month next succeeding each calendar quarter.

33007. All amounts required to be paid to the state pursuant to this part shall be paid in the form of remittances payable to the board.

33008. On or before the last day of the month following each calendar quarter, a return for the preceding quarterly period shall be filed with the board in a form prescribed by the board.

33009. The board shall collect the tax pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)) to the extent these provisions are not inconsistent with this part. For purposes of administration of the tax pursuant to this part, references in the Fee Collection Procedures Law to “feepayer” and “fee” shall include “taxpayer” and “tax.”

CHAPTER 5. DISPOSITION OF PROCEEDS

33010. All revenues, less refunds, derived under this part shall be deposited into the Local Safety and Protection Account established in the Transportation Tax Fund by Section 10752.2.

CHAPTER 6. MISCELLANEOUS

33012. The provisions of this part are not severable and, should a court hold in a final nonappealable order that any provision herein is unconstitutional or is otherwise invalid, the whole part shall be null and void.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

1 SEC. 3. The provisions of Section 1 of this act shall become
2 operative on the first day of the first calendar quarter commencing
3 more than 90 days after the effective date of this act.

4 SEC. 4. The act is an urgency statute necessary for the
5 immediate preservation of the public peace, health, or safety within
6 the meaning to Article IV of the Constitution and shall go into
7 immediate effect. The facts constituting the necessity are:

8 In order to provide funding to support and maintain public safety
9 services that have been reduced due to the economic recession and
10 state's budgetary problems, it is necessary that this act go into
11 immediate effect. However, the provisions of this act shall become
12 operative on the first day of the first calendar quarter commencing
13 more than 90 days after the effective date of this act.